

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25**

ALCOA CORPORATION

and

Case 25-CA-219925

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS LOCAL 104

RESPONDENT’S MOTION IN LIMINE

COMES NOW Respondent Alcoa Corporation (“Alcoa” or “Respondent”) and files this motion *in limine* to exclude certain information contained in witness affidavit to which the Charging Party may be entitled in accordance with *Jencks v. U.S.*, 353 U.S. 657, 672 (1957).

I. INTRODUCTION

The Regional Director has issued a Complaint alleging, among other things, Alcoa failed to provide “[t]he names of employees who provided witness statements to Respondent as part of an investigation wherein an employee was terminated.” (Compl. ¶ 7(a)(i)). In response to an information request from the United Steelworkers Local 104 (“the Union”) for the names of witnesses who provided information to Alcoa as part of its investigation, Alcoa raised concerns regarding maintaining witness confidentiality and offered the Union an accommodation, witness statements without employee names. During the Region’s investigation of this matter, Labor Relations Specialist Terrence Carr (“Carr”) provided an affidavit in which he identifies the witnesses to whom he spoke during his investigation, including the witness names Respondent kept confidential from the Union in response to its request for information. Alcoa asks that Carr’s

affidavit be redacted to remove the witness names at issue in the underlying Complaint therefrom until the matter is fully litigated.

II. ARGUMENT

Pursuant to the National Labor Relations Board's ("the Board") *Casehandling Manual*, Section 10394.7, "[t]he charging party also may be entitled, upon request and for the purpose of cross-examination, to a producible statement, in the possession of the General Counsel, of an agent who testifies on behalf of a respondent." In the instant case, the General Counsel has indicated its intention to call Carr as a witness, thereby triggering the parties' rights to his prior affidavit under the *Jencks* rule. As stated in the *Casehandling Manual*, this right extends to the Charging Party as Carr will be testifying on behalf of Respondent.

The very issue before the Administrative Law Judge ("ALJ") is whether the Union is entitled to the witness names at issue – whether Alcoa's legitimate and substantial confidentiality interests in keeping the witness names confidential outweigh the Union's need to have the information as set forth in *Detroit Edison v. NLRB*, 440 U.S. 301 (1979). Requiring the disclosure of the witness names by way of Carr's affidavit prior to a determination on the merits would render the case, and Alcoa's confidentiality concerns, moot. Alcoa should not be prejudiced in its ability to defend itself and raise its properly held confidentiality concerns at the hearing for adjudication.

In the interest of complete cooperation, Carr provided an affidavit, outlining his investigation into a discharged employee's alleged misconduct, including the names of the individuals he interviewed and who provided statements. Despite providing the names to the Board Agent as part of Carr's affidavit, Alcoa has not provided the Union with witness names due to concerns that the witnesses will be retaliated against and receive unfavorable treatment from the Union or fellow bargaining unit members at the direction or encouragement of the Union. If Carr's

affidavit were not redacted, the Union would receive the requested information without a determination by the ALJ that the Union's need for the information outweighed Alcoa's confidentiality concerns, as established by Board law. Moreover, if the Union attempted to introduce Carr's affidavit into the record for purposes of impeachment, the witness names would become part of the public record without a determination that the Union was entitled to the information and at the witnesses' expense.

Moreover, as an in camera review of Carr's affidavit will disclose, the witness names are not necessary for any impeachment purpose. Where Carr should not be required to testify as to the information at issue, the Union would not have a need for the witness names for purposes of impeachment. Instead, the Union can review a redacted version of the affidavit to determine whether the substance of Carr's testimony is in conflict with that provided in his affidavit. As such, the witness names' redaction from Carr's affidavit will not limit the Union's ability to use the affidavit to attempt to impeach Carr (the only purpose for which affidavits are provided), should it so deem appropriate.

III. CONCLUSION

For the foregoing reasons, Respondent's Motion *in Limine* should be granted, and the Region should not be allowed to present the unredacted affidavit at the hearing of this matter. Instead, the Region should be required to redact the witness names referenced in Affidavit prior to disclosure to the Union.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/

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Counsel for Respondent

Dated: February 1, 2019

CERTIFICATE OF SERVICE

I do hereby certify that on February 1, 2019, a true and correct copy of the foregoing Motion in Limine was *Electronically Filed* on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the foregoing Motion in Limine has been served by electronic mail this 1st day of February, 2019 on: Marty Ellison at mellison@usw.org and Raifael Williams at raifael.williams@nlrb.gov.

By: /s/
Counsel for Alcoa Corporation

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